

U.S. Application No. 09/914,793  
Attorney Docket No. 5100-000019/US

### **REMARKS**

Claims 1, 3-7 and 9-28 are all of the pending claims, with claims 1, 12, 13, 21 and 25 being written in independent form.

#### **I. Allowable Subject Matter:**

The Examiner allows claim 13. The Examiner also indicates that claims 14, 16-20 and 23 would be allowed if they were rewritten in independent form.

Applicant respectfully points out that claim 14 depends from allowed claim 13. Thus, the Examiner should allow claim 14 by virtue of its dependency.

Applicant does not rewrite claims 16-20 and 23 in independent form because independent claims 12 and 21 are believed to be patentable for the reasons discussed in detail below.

#### **II. Claim Rejections on Prior Art Grounds:**

The Examiner rejects claims 12, 15 21 and 22 under 35 USC 103(a) as being obvious over US 2,102,479 to A. Newfield ("Newfield") in view of US 4,880,133 to Cullinane ("Cullinane"); claims 1, 3-6, 9, 11 and 27 under 35 USC 103(a) as being obvious over Newfield in view of US 5,762,212 to Pomerantz ("Pomerantz"); claims 10 and 24 under 35 USC 103(a) as being obvious over Newfield in view of Pomerantz, and further in view of US 5,779,066 to Drower ("Drower"); claim 7 under 35 USC 103(a) as being obvious over Newfield in view of Pomerantz, and further in view of US

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3,027,014 to Lindblom ("Lindblom"); and claims 1, 3-6, 9, 10, 24, 25, 26 and 28 under 35 USC103(a) as being obvious over US 5,339,967 to Valiulis ("Valiulis") in view of Newfield. Applicant respectfully traverses all of these rejections in view of the following remarks. Each of the independent claims is discussed separately below.

**A. Independent Claim 1:**

Newfield in View of Pomerantz

The Examiner relies upon the Newfield reference to teach all of the features defined by claim 1, except for a carrier that "is substantially flexible or is divided into substantially rigid pieces which are coupled in a mutually flexible manner." Therefore, the Examiner looks to the secondary reference of Pomerantz to allegedly teach this feature. This rejection position is not convincing for the following reasons.

First, the Examiner's reliance upon the primary reference to Newfield is misplaced. The Examiner concludes that the lath 9 is made of wood because of the appearance of the hatch markings illustrated in Fig. 2. The Examiner's position is simply inconsistent with the helpful examination guidelines indicated in MPEP § 608.02 IX. Here, the MPEP illustrates the crosshatching that indicates various materials. According to the chart on page 600-110, the crosshatching in Fig. 2 of Newfield, indicates that the lath 9 is **metal** (not wood as alleged by the Examiner). Thus, the Examiner's rationale that the lath 9 is wood and thus inherently flexible is incorrect on its face.

For arguments sake, wven if the lath 9 were made of wood, the Examiner's inherency theory would still be incorrect. This is because

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Pomerantz does not teach that wood is inherently flexible. Indeed, the portion of Pomerantz (col. 4, lines 35-39) relied upon by the Examiner merely indicates that the flexible material may include **wood fiber based materials**, which is different than wood. For example, the fiber density of a wood fiber based material may be adjusted (as suggested by the Examiner). But the fiber density of wood is fixed (and not adjustable).

Turning to the next point, Pomerantz is from a very different technical field than that of the present invention. Indeed, Pomerantz relates to a display strip merchandiser that may be used by retailers to display products on a vertical strip beyond a shelf edge. Clearly, Pomerantz does not relate to Applicant's field of endeavor. Furthermore, those skilled in the art of holders for plant cuttings would not reasonably be expected or motivated to look to the art of display strip merchandisers. The two technical fields are confronted with different problems (i.e., holding plant cuttings for transportation while taking up a small amount of space **versus** displaying products to encourage sales). Clearly, Pomerantz is non-analogous art. Thus, the Examiner's reliance upon Pomerantz is inappropriate.

Valiulis in view of Newfield

The Examiner relies upon Valiulis to teach all of the features defined by claim 1, except for the clamping elements being "fixed to the carrier such that plant cuttings clamped in the clamping element extend substantially parallel to each other." Therefore, the Examiner looks to the Newfield reference to allegedly teach this feature. Applicant respectfully disagrees.

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The primary reference to the Valiulis is directed to a strip merchandiser, quite similar to the one disclosed by Pomerantz. Thus, Applicant respectfully submits that Valiulis is non-analogous art for reasons similar to those noted above with respect to Pomerantz. The Examiner's reliance upon Valiulis is inappropriate.

Turning to the next point, Valiulis does indicate that the merchandiser strip 10 is fabricated from a plastic strip. But this does not necessarily mean that the merchandiser strip 10 is flexible. Indeed, many plastics are **rigid and inflexible**. In this regard, the Examiner is respectfully requested to provide a basis in fact or some cogent line of technical reasoning to support the proposition that the merchandiser strip is necessarily flexible. Otherwise, the Examiner's inherency theory must fail.

Finally, Applicant respectfully submits that those skilled in the art would not have been motivated to hang the tobacco leaves of Newfield in the strip merchandiser of Valiulis, as alleged by the Examiner. This is because, according to Newfield's straightforward disclosure, the tobacco leaves are dampened so that they may be readily handled. Newfield goes on to explain that "it is essential that the leaves shall be evenly moistened but not to an excessive degree, for if the leaves become too moist they are thereby injured and decreased in value." (page 1, lines 27-34).

If tobacco leaves were inserted into the strip merchandiser 10 of Valiulis, they would be horizontally oriented. By virtue of such horizontal orientation, moisture would collect on the upward facing surfaces of the leaves, thereby causing uneven moistening of the same, which is in direct conflict with Newfield's intended purpose. Certainly then, those skilled in

the art would not have been motivated to implement the Examiner's alleged combination of references.

**B. Independent Claim 12:**

Newfield in View of Cullinane

The Examiner relies upon Newfield to teach all of the features defined by claim 12, except for the parts of the clamping elements taking substantially the form of a semi-cylindrical sleeve. Therefore, the Examiner looks to the Cullinane reference to allegedly teach this feature. In so doing, the Examiner points out that the clamping elements illustrated in Fig. 4 of Newfield include parts 7, 8 that are separated by a gap.

To more clearly define over Newfield, Applicant amends claim 12 to recite that the narrow gap is "located in a plane at right angles to the carrier and the central plane." Example, non-limiting embodiments of this feature are illustrated in Fig. 1. Here, the gaps are designated with reference characters 10 and 11.

In contrast to the claimed invention, Newfield teaches that the gaps on either side of the parts 7, 8 of the clamping elements (i.e., the gaps between the clamping elements) are located in a plane that is parallel to the carrier 9. This is in contrast to amended claim 12. Furthermore, the secondary reference to Cullinane does not make up for the deficiencies of Newfield.

**C. Independent Claim 21:**

Newfield in View of Cullinane

The Examiner relies upon Newfield to teach all of the features defined by claim 21 (as currently amended). That is, the "semi-cylindrical sleeve"

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feature has been deleted from the claim. Thus, the Examiner's reliance upon the Cullinane reference is moot.

To more clearly define over Newfield, Applicants amend claim 21 to recite that the clamping elements "extend in a direction at right angles to the axis," about which the carrier is tiltable. An example, non-limiting embodiment of this feature is depicted in Fig. 8. Here, the clamping elements 26, 27 extend in a direction at right angles to a tilting axis that extends through the connecting piece 28.

Newfield is simply not pertinent to claim 21. This is true even if the clamping elements of Newfield are capable of tilting on an axis extending substantially at a right angle to the plane of the carrier, as alleged by the Examiner.

**D. Independent Claim 25:**

Valiulis in View of Newfield

Independent claim 25 is somewhat similar to independent claim 1 to the extent that claim 25 recites a "plant cuttings" feature and a "flexibility" feature.

The Examiner relies upon Valiulis to teach all of the features defined by claim 25, except for the clamping elements being fixed to the carrier such that the plant cuttings clamped in the clamping element extend substantially parallel to each other. Therefore, the Examiner looks to the Newfield reference to allegedly teach this feature.

Applicant respectfully submits that this rejection position is incorrect for all of the reasons noted above with respect to the same rejection applied against claim 1.

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**CONCLUSION**

In view of the above, Applicant respectfully requests reconsideration and allowance of all the pending claims.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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